

Chapter 8 Appeals Process

When to Appeal

If you are challenging a reduction in hours or a termination of services, you must request a fair hearing within the 10 days, before the notice of action is effective, in order to continue receiving all your hours until the hearing is over.

If you believe you have not been allowed enough hours, you may challenge the county's decision at any time. However, the Administrative Law Judge (ALJ) may only give you an increase in hours for up to the three months prior to your hearing request. If you ask for a hearing April 15, the ALJ can go back to January 1. MPP 22-009.12. (You always have the right to ask your county worker to reassess you to see if he or she agrees you need more hours. If your county worker agrees, then you do not need to go to a hearing.)

Notice of Action to Deny or Change Benefits

If the county denies or intends to change your IHSS services, it must give you a written notice. The notice must include the following:

- (1) The action the county intends to take,
- (2) The reasons for that action,
- (3) The specific regulations supporting the action,
- (4) An explanation of the right to request a hearing, and, if appropriate,
- (5) The circumstances under which aid will be continued if a hearing is requested.

Generally, the notice of action must be mailed to you at least 10 days before the effective date of the action. The 10 days does not include the date of mailing or the date that the action is to take effect. MPP 22-001(a)(1); 22-001(t); 22-071; 22-072; 30-009.236

What are the Timelines for Appeal?

If you are already receiving IHSS services, file the request for appeal during the 10 calendar days BEFORE the Notice of Action is effective. If the request is filed within this 10-day period, your benefits will not change until there is a hearing and a decision issued. *See* Aid Paid Pending section below. MPP 22-072.5

A request for hearing MUST be filed *within 90 calendar days* after the date of the county action or inaction. However, if the request is filed after the 10-day period mentioned above, the benefits will NOT continue pending the hearing. If you win

at hearing, the judge may order back payment. The date of action is the date the notice of action was mailed by the county. MPP 22-009.1.

Note: the date of the action is different than the effective date of the notice.

How to Request an Appeal

To request a hearing:

Fill out the back of the notice of action form and send to the address indicated, or

Send a letter to:

IHSS Fair Hearing
State Hearings Division
Department of Social Services
744 P Street, Mail Stop 37-19
Sacramento, CA 95814

Give your name and state identification number and say that you want a fair hearing because you do not believe you have been allowed the hours you need. If you need the hearing to be held in your home, include that in your request. If you need an interpreter or if you need an interpreter for someone who will be testifying (such as your IHSS worker), include that also in your request.

If asked, the county must furnish a duplicate copy of the Notice of Action if the back of that form is used to request a hearing. MPP 22-004; 22-071.5

The written request is filed with the CWD. The address is on the Notice of Action form with the information about the right to request a hearing. For record keeping purposes, it is best to file a written request. MPP 22-004.2

You can fax the letter (in addition to mailing it) to 916-229-4110.

OR

Call the toll free number at 800-743-8525 to request a fair hearing.

Remember to keep the county informed of any change of address during the appeal process so notices for the hearing are received. *And, remember the deadlines for filing.*

What is Aid Paid Pending?

Except under limited conditions, when a timely request for a state hearing is filed within the 10 calendar days before the notice of action is effective, IHSS will continue at the same level the person would have received if the county had not taken the action. This aid paid pending the decision is not to be considered an overpayment even if the decision is in favor of the county. MPP 22-072; 22-073; 30-768.111

If adequate notice was not given to you as required and aid was discontinued, suspended, canceled, terminated or reduced then the CWD must reinstate the benefits retroactively. MPP 22-049.523

Aid paid pending will stop when you withdrawal or abandon the request for a state hearing.

Scheduling Hearings

The State Hearings Division will mail or deliver to you and the county a written notice of the time and place of the hearing not less than ten days prior to the hearing. You may waive the 10-day requirement and accept a shorter time period. MPP 22-045.3

State hearing requests involving issues of urgency that DSS State Hearings Division deems necessary may be scheduled on an expedited basis. (All County Appeals Letter, January 19, 2004.)

If you are unable to attend the hearing at the hearing location because of poor health, the hearing may be held in your home or in another place agreed to by the county and you. A hearing may also be conducted by telephone or video conference instead of an in-person hearing if you agree. MPP 22-045.1

County Appeals Worker

After you file an appeal, you will receive from the state information about your hearing rights and telling you the address and phone number of the County appeals worker, the person who will represent the County at the hearing. Your IHSS file is in that office. Many appeals workers try to resolve a dispute without a hearing. The appeals workers are often more experienced and knowledgeable than the people you've dealt with in the local office. The appeals worker may call you about a "conditional withdrawal" so that a new assessment can be done. If you agree to a conditional withdrawal of your appeal, you have a right to have the

hearing rescheduled if you disagree with the new assessment or a decision not to authorize retroactive benefits.

Make clear to the appeals worker during the conditional withdrawal process that the effective date of any retroactive benefits will be based on the effective date relating to the original appeal. Get this assurance in writing as part of the conditional withdrawal. This concern is based on the State Hearings Division's recent policy to treat appeals of redeterminations following conditional withdrawals as new hearings requests. (Training Bureau Note, Item 05-07-01A, July 6, 2005.)

The conditional withdrawal agreement must be in writing and signed by both the county and the complainant. The agreement is required to provide that the actions of both parties will be completed within 30 days from the date the agreement is signed by both parties and received by the county. MPP 22-054.211(b)(3).

Preparing for the Appeal

Accessing the Contents of your File

Upon request, the County Welfare Department (CWD) must allow you to examine the case record during regular working hours. You have this right both prior to and during the hearing. MPP 22-051.1; .2 Also, when requested, the county is required to give copies of specific policy materials, including regulations, necessary for you or to determine whether a state hearing should be requested or to prepare for a state hearing. These copies must be without charge or at a charge related to the cost of reproduction. MPP 22-051.3

Get together information about how the County IHSS worker determined the hours you were authorized.

- a. Ask your worker for a copy of the latest needs assessment forms. These county forms will include notes about why hours were or were not authorized. Also ask for a copy of the most recent SOC 293 form. The SOC 293 forms include information on the functional ranking about what you can and cannot do. If you are challenging a reduction, ask for copies of both your new and your old county assessment forms and your new and old SOC 293 forms.
- iii. Ask for a copy of the sheets in your file where notes were made about contacts and visits with you over the last year.
- iv. Ask your IHSS worker for a copy of the County's time-for-task

guidelines. Remember, time-for-task guidelines may not be used for personal care tasks.

- v. Ask your worker for copies of any doctor or medical reports in your file and for copies of any paramedical forms.



Note: Welf. & Inst. Code § 10850(c) authorizes DSS to issue regulations concerning access to case files, including access to case files by applicants and recipients. The DSS regulations are in the Manual of Policies and Procedures. These regulations are in Divisions 19 (confidentiality) and 22 (state hearings) and are available on the internet at

www.dss.cahwnet.gov/ord/CDSSManual_240.htm. These regulations also apply when the services you receive or seek are covered under the Medi-Cal personal care services program. Welf. & Inst. Code § 14100.2; Cal. Code Regs., tit. 22 § 50111. The state access regulations supersede any more restrictive County regulations. Welf. & Inst. Code §§ 10850(c) and 14100.2(f). If you run into problems accessing your case file, call Protection & Advocacy.

Manual of Policy & Procedures DSS Manual § 19-005.1 says any recipient or applicant, or his or her authorized representative, may review the file “made or kept by the county welfare department in connection with the administration of the public assistance program.” You can review medical records in your file. DSS Manual § 19-006 note. The only records you cannot see are those covered by a specific “privilege” such as the lawyer-client privilege that does not belong to you. DSS Manual § 19-006. See, also, the state hearing regulations at DSS Manual § 22-051. The county welfare department must copy for you any statutes, policy materials, or regulations needed to prepare for a hearing. DSS Manual § 22-051.3.



- vi. If IHSS reduced your hours, ask your IHSS worker for copies of the regulations listed on your reduction notice.
- vii. The IHSS regulations are in the Department of Social Services’ Manual of Policy and Procedures. If you have access to the Internet, you can find the IHSS regulations at www.dss.cahwnet.gov/ord/CDSSManual_240.htm. There are four entries for the Division 30 regulations. Skip the first entry. The IHSS regulations start about 5 pages into the second entry, continue through the third entry, and finish up in the fourth entry. You also can get the All-County letters at www.dss.cahwnet.gov/lettersnotices/AllCountyL_542.htm. All-county letters are directives the state Department of Social Services sends to the

counties. The letters cover a lot of programs; only a few of the letters will be about IHSS.

County's Position Statement

The County's position statement summarizes the facts of the case and the regulatory justification for the CWD action. It also includes copies of documentary evidence and a list of witnesses which the county intends to use during the hearing.

You are entitled to the County's statement of position two business days before the hearing. If your hearing is on Friday, you are entitled to the position statement Wednesday morning. (You are entitled to look at your file at any time whether or not you have a hearing pending. See the note above under paragraph 2.)

The County's statement of position will help you identify other evidence and witnesses you may need. If you do not get a copy until just before the hearing, you can ask to have the record left open to submit additional evidence (such as letters or statements) to respond to any statement in the County's position paper. Even if you get the County's statement of position in time, you may still ask to have the hearing record left open so that you may submit additional evidence.

Drafting your Position Statement

Although it is not necessary for you to have your own position statement at hearing, our experience has shown that this level of preparation will enable you to present a stronger case. Attached as F of this publication is a sample position statement involving IHSS services that you may wish to draw upon as guidance in drafting your position statement.

Postponements

Postponements are granted under limited conditions. The ALJ may postpone a hearing at any time before the hearing or at the request of the county at the hearing. Reasons that establish *good cause* for a postponement by you include:

- (1) Death in the family.
- (2) Personal illness or injury.
- (3) Sudden and unexpected emergencies which prevent you or your authorized representative from appearing.
- (4) A conflicting court appearance which cannot be postponed.
- (5) When the county, when required, does not make a position statement available to you not less than two working days before the date of the scheduled hearing.

(6) When the county has modified the position statement after providing the statement to you *and* you waive the 90-day period within which a decision must be issued. MPP 22-053.1; 14; 16; 22-073.253

Failure of you or your authorized representative to receive the hearing notice is not good cause *if* the reason is because the CWD or DSS was not notified of a change of address. MPP 22-054.222(a)(1)

The Hearing

The County goes first and says why your hours were cut or why you should not have the additional hours you believe are needed.

The hearing will involve the presentation of evidence (testimony by witnesses, letters, diary log, medical reports) about your needs in the service category areas where you and the county disagree. The evidence should explain what you need, how long it takes to provide the service, the reason you need more time than that set out in the assessment or the County guidelines, and what risks you may be exposed to if you do not receive the level of services requested. IHSS fair hearings are informal. The important thing is to explain why more time is needed. The best evidence is from the people who provide you care and who kept a diary record of the time it takes.

Witnesses may include — in addition to the IHSS recipient — past and present IHSS providers, regional center counselor, friends and family, etc. For each witness, list the points you want that witness to make and cross off each point as it is made.

You should be prepared to submit whatever documentary evidence you wish the judge to consider at the hearing. Also, you should prepare in advance a list of questions to answers you want the judge to hear from your and the county's witnesses. Although not necessary, we recommend that you also prepare in advance opening and closing statements to make at the hearing.

A copy of all documents submitted by either you or the county at the hearing is required to be made available to both parties. Be sure to have copies of all your documents for the hearing officer and the CWD. The CWD is required to provide copies of all documents to you free of charge. MPP 22-049.8

Compliance with the Decision

As soon as the county receives the decision, it must start action to comply with the decision. MPP 22-078.1. You may contact DSS, orally or in writing, you are dissatisfied with the compliance. DSS must take appropriate action to ensure compliance with the decision. MPP 22-078.4.

Getting Help with your Hearing

For more help, call the regional center (if the IHSS recipient is a client), an independent living center, a legal aid program, senior advocacy program, the DISABILITY RIGHTS CALIFORNIA toll free number (800) 776-5746, or the Western Law Center for Disability Rights (213) 736-1031. To find out the telephone number of the senior advocacy program in your area, call your county office on aging or the State Department of Aging at (800) 510-2020.

If the county is seeking to reduce your hours or to eliminate a service (such as protective supervision), the county has the burden of showing how you have improved or how changed living circumstances mean you need fewer hours. Call DISABILITY RIGHTS CALIFORNIA to receive a copy of a memo describing the county's burden.

For more information about the hearing process, visit the website of the State Hearings Division at www.dss.cahwnet.gov/shd/default.htm